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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA, New York, N.Y.
5 v. 21 Cr. 446 (VSB)

6 ANDREW FRANZONE,
7 -----x

8 Defendant.
9

10 Before:
11 HON. VERNON S. BRODERICK,
12 U.S. District Judge
13

14 APPEARANCES

15 MATTHEW R. PODOLSKY
16 Acting United States Attorney for the
17 Southern District of New York
18 BY: SARAH MORTAZAVI
19 MARGUERITE COLSON
20 MARGARET E. LYNAUGH
21 Assistant United States Attorneys

22 RUBINSTEIN & COROZZO, LLP
23 Attorneys for Defendant
24 BY: JOSEPH R. COROZZO
25 ANGELA D. LIPSMAN

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1 (Case called)

2 THE COURT: If I can ask counsel to please identify
3 themselves for the record.

4 MS. MORTAZAVI: Good afternoon, your Honor. For the
5 government you have got Sarah Mortazavi, Margueritz Colson, and
6 Maggie Lynaugh.

7 THE COURT: For the defense?

8 MR. COROZZO: Good afternoon, your Honor. On behalf
9 of Mr. Franzone Joseph Corozzo, and to my left is my associate
10 Angela Lipsman.

11 THE COURT: Thank you. Good afternoon.

12 Mr. Franzone, I have been informed that you wish to
13 plead guilty to Counts and Two of indictment 21 CR 446, which
14 charges you with securities fraud and wire fraud respectively.
15 Is that correct?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Now, before I accept your plea I'm going
18 to ask you certain questions so that I can establish, to my
19 satisfaction, that you are pleading guilty because you are in
20 fact guilty and not for some other reason, and also to
21 establish to know what you will be giving up by pleading
22 guilty. If you don't understand one of my questions, or if you
23 wish additional time to speak with your attorneys, just let me
24 know and either I will try and answer your question or I will
25 allow you the time you need to speak with your attorneys.

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1 If I could ask, Mr. Quintero, if you could please
2 swear in Mr. Franzone?

3 THE DEPUTY CLERK: Mr. Franzone, can you stand and
4 raise your right hand?

5 (Defendant sworn)

6 THE COURT: What is your full name?

7 THE DEFENDANT: Andrew Terrence Franzone.

8 THE COURT: How old are you?

9 THE DEFENDANT: 48 years old.

10 THE COURT: How far did you go in school?

11 THE DEFENDANT: MBA at Columbia Business School.

12 THE COURT: Have you ever been treated or hospitalized
13 for any mental illness?

14 THE DEFENDANT: No.

15 THE COURT: Are you now or have you recently been
16 under the care of a doctor or a psychiatrist?

17 THE DEFENDANT: No.

18 THE COURT: Have you ever been treated or hospitalized
19 for any type of addiction including drug or alcohol addiction?

20 THE DEFENDANT: No.

21 THE COURT: Have you taken any drugs, medicine or
22 pills, or drunk any alcoholic beverages in the past 24 hours?

23 THE DEFENDANT: No.

24 THE COURT: Is your mind clear today?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand what is happening today?

2 THE DEFENDANT: Yes.

3 THE COURT: Let me ask defense counsel, Mr. Corozzo,
4 have you discussed this matter with Mr. Franzone?

5 MR. COROZZO: I have, your Honor.

6 THE COURT: From your perspective, does he understand
7 the rights that he will be waiving by pleading guilty?

8 MR. COROZZO: Yes, your Honor.

9 THE COURT: Similarly, from your perspective, is he
10 capable of understanding the nature of these proceedings?

11 MR. COROZZO: He is, your Honor.

12 THE COURT: Do either counsel, any counsel, have any
13 doubt as to Mr. Franzone's competence to plead guilty at this
14 time?

15 MS. MORTAZAVI: No, your Honor.

16 MR. COROZZO: No, your Honor.

17 THE COURT: So, Mr. Franzone, on the basis of your
18 responses to my questions, my observations of you here in
19 court, in other words your demeanor, I find that you are fully
20 competent to enter an informed plea of guilty at this time.

21 Have you received a copy of the indictment,
22 Mr. Franzone?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you read it?

25 THE DEFENDANT: Yes.

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1 THE COURT: Now, do you waive its public reading or do
2 you wish me to read it to you?

3 THE DEFENDANT: I will waive it.

4 THE COURT: OK.

5 Have you had enough of a chance to discuss with your
6 attorneys the charges to which you intend to plead guilty and
7 any possible defenses to those charges?

8 THE DEFENDANT: Yes.

9 THE COURT: Have your attorneys explained to you the
10 consequences of entering a plea of guilty?

11 THE DEFENDANT: Yes.

12 THE COURT: Are you satisfied with your attorney's
13 representation?

14 THE DEFENDANT: Yes.

15 THE COURT: Now I'm going to explain to you certain
16 constitutional rights that you have. Now, these are rights
17 that are you going to be giving up by pleading guilty. So, as
18 I mentioned earlier, listen carefully, and if you don't
19 understand something that I have said, just stop me, and either
20 I or your attorneys will explain it to you more fully. OK?
21 You just have to answer verbally.

22 THE DEFENDANT: Yes.

23 THE COURT: So, under the Constitution and laws of the
24 United States you have the right to plead not guilty and to go
25 to trial on the charges in the indictment.

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, if you did plead not guilty, you
4 would be entitled to a speedy and public trial by a jury on the
5 charges contained in the indictment.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Now, at a trial you would be presumed
9 innocent, and the government would be required to prove your
10 guilt beyond a reasonable doubt using competent evidence before
11 you could be found guilty.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Now, a jury of 12 people would have to
15 agree unanimously that you were in fact guilty and you would
16 not have to prove that you were innocent if you were to go to
17 trial.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Now, at every stage of the case you would
21 be entitled to be represented by an attorney, and if you
22 couldn't afford an attorney, one would be appointed at public
23 expense, in other words free of cost to you, to represent you.

24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Now, during the trial the witnesses would
2 have to come here to court and testify in your presence. Your
3 attorneys could cross examine the witnesses for the government,
4 object to evidence offered by the government, and offer
5 evidence on your own behalf, if you so desired. You would also
6 have the right to have subpoenas issued or other process to
7 compel witnesses to come and testify in your defense.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, at a trial, although you would have
11 the right to testify if you wanted to, you would also have the
12 right not to testify, and if you decided not to testify, no
13 one, including the jury, could draw a negative inference from
14 the fact -- excuse me, could draw an inference or a suggestion
15 of guilt from the fact that you did not testify.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Have you had a full opportunity to discuss
19 with your attorneys whether there is a basis to seek
20 suppression of some or all of the evidence against you on the
21 grounds your Constitutional rights were violated?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that by pleading guilty
24 you are giving up your right to seek suppression of any of the
25 evidence against you?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that --

3 MR. COROZZO: Your Honor, however there were motions
4 decided in this case.

5 THE COURT: Correct. I'm not sure -- there is a
6 Pimentel letter so I think you preserve the appellate right to
7 appeal those issues even if you are pleading guilty.

8 MR. COROZZO: I believe we have, your Honor.

9 THE COURT: OK.

10 Mr. Franzone, what that means is so there are two ways
11 this could have gone. Right? You could have decided to plead
12 guilty and there would have been a plea agreement, in which
13 case you would have waived certain of your rights including a
14 right to appeal under certain limited circumstances, in other
15 words if your guideline range -- if I sentenced you to more
16 than what was in the plea agreement, you could have appealed
17 that but you couldn't have appealed the prior determination
18 that I made with regard to your pretrial motions. You are
19 pleading guilty here pursuant to a Pimentel letter so there is
20 no understanding concerning the limitations with regard to your
21 appellate rights concerning the prior decision that I made so
22 you will have the ability to appeal that. OK?

23 THE DEFENDANT: Yes.

24 THE COURT: Now, if you are convicted at trial, you
25 would have the right to appeal that verdict.

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: So even now, as you are entering your
4 plea, you have the right to change your mind and to go to trial
5 on the charges in the indictment.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: So, if you plead guilty and I accept your
9 plea, you are going to be giving up your right to trial and the
10 other rights I have just discussed with you other than your
11 right to an attorney which you have regardless of whether or
12 not you plead guilty. But you should understand there will be
13 no trial and I will enter a judgment of guilty and sentence you
14 on the basis of your plea after I have considered a presentence
15 report, which will be prepared by the Probation Department, and
16 whatever submissions I get from your attorneys and from the
17 government's attorneys. There will be no appeal with respect
18 to whether the government could use the evidence -- well, I was
19 just going to say there would be no appeal with respect to
20 whether the government could use the evidence against you or
21 with respect to whether you did or did not commit this crime,
22 and the exception is with regard to the pretrial motions that
23 you have made.

24 OK?

25 THE DEFENDANT: Yes.

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1 THE COURT: If you plead guilty, you will also have to
2 give up your right not to incriminate yourself because in a
3 moment I'm going to ask you to tell me what it is you did that
4 makes you believe that you are guilty of the charges in Counts
5 One and Two of the indictment.

6 Do you understand each and every one of the charges
7 that I have just discussed with you?

8 THE DEFENDANT: Yes.

9 THE COURT: And are you willing to give up your right
10 to trial and the other rights?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that you are charged
13 with securities fraud in violation of Title 15, United States
14 Code, Sections 78j(b) and 78ff, Title 17, Code of Federal
15 Regulations, Section 240.10b-5, and Title 18, United States
16 Code, 2, as well as Title 18, United States Code, Section 1343
17 and also Section 2.

18 Do you understand that you are charged with securities
19 fraud and wire fraud under those statutes?

20 THE DEFENDANT: Yes.

21 THE COURT: Let me ask the government to please state
22 the elements of the crimes in question.

23 MS. MORTAZAVI: Certainly, your Honor.

24 With respect to Count One, had this matter proceeded
25 to trial, the government would have to prove the following

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1 elements beyond a reasonable doubt:

2 First, that in connection with the purchase or sale of
3 a security, the defendant employed a device, scheme, or
4 artifice to defraud, made an untrue statement of a material
5 fact or omitted to state a material fact which omission made
6 what was said misleading; or engaged in an act, practice, or
7 course of business that operated or would operate as a fraud or
8 a deceit upon a purchaser or seller of the security;

9 Second, that when the defendant engaged in this scheme
10 he acted knowingly, willfully, and with an intent to defraud;
11 and

12 Third, that in furtherance of the scheme, there
13 occurred at least one use of any means or instrument of
14 transportation or communication in interstate commerce, or the
15 use of the mails, or the use of any facility of any national
16 securities exchange.

17 The government would also have to prove venue by a
18 preponderance of the evidence.

19 With respect to Count Two, the government would have
20 to prove the following elements beyond a reasonable doubt:

21 First, that the defendant employed a scheme or
22 artifice to defraud or to obtain money or property by false
23 pretenses, representations, or promises;

24 Second, that the false or fraudulent representation or
25 concealment related to a material fact or matter;

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1 Third, that the defendant devised or participated in
2 the scheme with knowledge of its fraudulent nature and with
3 specific intent to defraud;

4 Fourth, that interstate wires were used in furtherance
5 of the scheme to defraud or to obtain money or property by
6 means of materially false or fraudulent pretenses,
7 representations, or promises.

8 And, the government would also have to prove venue by
9 a preponderance of the evidence.

10 THE COURT: Thank you.

11 Now, Mr. Franzone, do you understand that if you were
12 to go to trial, the government would have to prove each of the
13 elements the prosecutor just mentioned beyond a reasonable
14 doubt, with the exception of venue?

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Now I'm going to tell you what the maximum
18 penalty is for these crimes. Now, the maximum means that is
19 the most you could possibly face. It doesn't necessarily mean
20 that that is what you will get, but you need to understand that
21 by pleading guilty, you are subjecting yourself to the
22 possibility of any combinations up to the maximum I'm about to
23 describe to you.

24 OK?

25 THE DEFENDANT: Yes.

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1 THE COURT: First, with regard to restrictions on your
2 liberty, in other words possible terms of incarceration. The
3 maximum term of imprisonment on Count One is 20 years'
4 imprisonment, which could be followed by a maximum of three
5 years of supervised release. The maximum term of imprisonment
6 on Count Two is also 20 years, which could be followed by a
7 maximum of three years of supervised release.

8 Supervised release means that you will be subject to
9 the supervision of the probation department. There will be
10 rules of supervised release that you will have to follow and if
11 you violate those rules, you can be returned to prison without
12 a jury trial to serve additional time with no credit for the
13 time you served in prison as a result of your sentence and no
14 credit for the time you spent on post-release supervision.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: You should also understand there is no
18 parole in the federal system, so that if you are sentenced to a
19 term of imprisonment, you will not be released early on parole.
20 However, there is a limited opportunity to earn credit for good
21 behavior, but you will have to serve at least 85 percent of the
22 time to which you are sentenced.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Now, second, in addition to restrictions

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on your liberty, there is certain maximum financial penalties that you face. So, the maximum allowable fine on Count One is \$5 million or twice the gross gain derived from the offense or twice the gross loss to persons other than yourself, whichever is greater. The maximum allowable fine on Count Two is \$250,000 or twice the gross gain derived from the offense or twice the gross loss to persons other than yourself, again, whichever is greater.

In addition, I must order restitution to any person or entity injured as a result of your crimes.

I can also order that you forfeit all property derived from the offense or used to facilitate the offenses.

Finally, I must order a mandatory special assessment of \$100 on each count, for a total of \$200.

Do you understand that these are the maximum possible maximum penalties?

THE DEFENDANT: Yes.

THE COURT: Mr. Franzone, are you a United States citizen?

THE DEFENDANT: Yes.

THE COURT: Were you born in this country?

THE DEFENDANT: Yes.

THE COURT: Do you understand that as a result of your guilty plea you may lose certain valuable civil rights to the extent you have them or could otherwise obtain them such as the

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1 right to vote, the right to hold public office, the right to
2 serve on a jury, and the right to possess any kind of firearm?

3 THE DEFENDANT: Yes.

4 THE COURT: Are you currently serving any other
5 sentence, whether state or federal, or are you being prosecuted
6 by the state for any crime?

7 THE DEFENDANT: No.

8 THE COURT: Are you currently on parole?

9 THE DEFENDANT: No.

10 THE COURT: Now, do you understand that if anyone,
11 your attorneys or the government's attorneys, have attempted to
12 predict for you what your sentence will be, that their
13 prediction could be wrong?

14 THE DEFENDANT: Yes.

15 THE COURT: Now, no one, not your attorneys, not the
16 government's attorneys -- no one -- can give you any assurance
17 of what your sentence will be since, as I mentioned, I'm going
18 to sentence you and we are not going to do that today. As I
19 mentioned, I'm going to wait until I get the presentence
20 report, do my own independent calculation of the guidelines
21 that applies to your case as I am required to do under the law,
22 consider that guideline range and any possible departures from
23 it, and determine, ultimately, what a reasonable sentence is
24 for you based on the sentencing factors contained in Title 18,
25 United States Code, Section 3553(a).

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Have you discussed these sentencing issues
4 with your attorneys?

5 THE DEFENDANT: Yes.

6 THE COURT: So, even if your sentence is different
7 from what your attorneys or what the government's attorneys
8 have told you, even if it is different from what you expect or
9 what is contained in the Pimentel letter -- which I will
10 discuss with you in a moment -- you will still be bound by your
11 guilty plea and I won't allow you to withdraw your plea of
12 guilty.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Now, as I mentioned, there is a Pimentel
16 letter here. Mr. Franzone, did you receive a Pimentel letter
17 dated April 11 of 2025 earlier today?

18 MR. COROZZO: No, your Honor. There was no Pimentel
19 letter. We --

20 THE COURT: Oh. OK. So why don't you take a moment.
21 Do you have an extra copy so that Mr. Franzone can read it
22 independently of his attorneys?

23 So, Mr. Franzone, why don't you take a moment to read
24 through that letter and then speak with your attorneys about
25 it. OK?

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1 If you want, Mr. Corozzo, if you want you can go to
2 the witness room which is in the back, we can unlock it --

3 MR. COROZZO: It shouldn't be necessary, your Honor,
4 because in the past we have had multiple plea agreements and
5 drafts of plea agreements. These guidelines would be
6 reflective of the last plea agreement so we will just go
7 through the guidelines range.

8 THE COURT: I don't know -- I'm not privy to that
9 but --

10 MS. MORTAZAVI: It is not identical to prior
11 discussions and plea offers that have been made so there are
12 some new elements.

13 THE COURT: So let's take the time. At a minimum, it
14 won't include three points for acceptance of responsibility but
15 there may be other things, for example it may have just been a
16 plea to one count rather than the other.

17 So, why don't you take the time.

18 MR. COROZZO: Absolutely, your Honor.

19 THE COURT: Just let me know, let my staff know when
20 you are ready to go.

21 MR. COROZZO: OK.

22 MS. MORTAZAVI: And your Honor?

23 THE COURT: Yes.

24 MS. MORTAZAVI: Since counsel is going to take a
25 minute with his client, we just wanted to raise one issue that

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1 we wanted to make sure we clarify on the record.

2 THE COURT: Yes.

3 MS. MORTAZAVI: There was a colloquy on whether the
4 defendant preserves his rights to appeal your Honor's
5 suppression ruling.

6 THE COURT: Am I wrong about that?

7 MS. MORTAZAVI: Under *Tollett v. Henderson*, which is a
8 1973 Supreme Court case, the defendant waives his rights --

9 THE COURT: Once he pleads guilty.

10 MS. MORTAZAVI: -- so his suppression motion --
11 correct.

12 THE COURT: Even though, unless -- well, I suppose
13 there could be a carve-out but there is no carve-out here, the
14 Pimentel doesn't make it.

15 So what that means, Mr. Franzone, is that as I
16 initially thought but I corrected myself in an incorrect way,
17 so by pleading guilty, you are giving up your right to appeal
18 my decision on your pretrial motions so you won't be able to
19 appeal that. What you will be able to appeal ultimately is the
20 sentence that you receive no matter where it is within the
21 guidelines. OK?

22 Yes?

23 MS. MORTAZAVI: Your Honor, to preview so that defense
24 counsel is aware of this, we are going to ask your Honor to
25 direct the defendant to answer questions related to this just

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1 so that there is no potential ambiguity as to what he is
2 waiving.

3 THE COURT: I'm sorry? Are these questions in
4 connection with the factual allocution or are these
5 questions --

6 MS. MORTAZAVI: In connection with the rights he
7 believes he is preserving --

8 THE COURT: I see.

9 MS. MORTAZAVI: -- versus those that he is waiving by
10 entering a guilty plea.

11 THE COURT: OK.

12 MS. MORTAZAVI: So that there is no confusion as to
13 his understanding going into this hearing.

14 THE COURT: In addition, let me ask, I don't need to
15 know the specifics, but were the prior plea agreements that
16 were offered, were they more -- the guideline calculation, were
17 they more beneficial other than the three points for acceptance
18 of responsibility?

19 MS. MORTAZAVI: Yes.

20 THE COURT: OK. All right.

21 MS. MORTAZAVI: And just to clarify, your Honor, there
22 was one plea agreement that was extended which was more
23 beneficial. There was a second plea offer that was discussed,
24 never formally extended on paper, but the guidelines that were
25 discussed there were more beneficial as well.

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1 THE COURT: OK. All right.

2 So why don't you take the time to discuss the Pimentel
3 with Mr. Franzone.

4 MR. COROZZO: Your Honor, you said we can use a room?

5 THE COURT: Yes.

6 THE DEPUTY CLERK: I will open it, Judge.

7 THE COURT: Great. Thank you.

8 (Recess)

9 THE COURT: So, as I mentioned, there is a Pimentel
10 letter dated April 11. Mr. Franzone, have you had an
11 opportunity to read that letter?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you had an opportunity to go over
14 that letter with your attorneys?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that the Pimentel letter
17 is not binding on me?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand the Pimentel letter is
20 not a plea agreement?

21 THE DEFENDANT: Yes.

22 THE COURT: So, as I mentioned, I have my own
23 obligation to determine the correct guideline range here and
24 what the appropriate sentence is in your case.

25 THE DEFENDANT: Yes.

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1 THE COURT: So I'm not saying that I'm going to come
2 up with a guideline that is different than the Pimentel, but if
3 I do, and even if that guideline range is higher, I still will
4 not allow you to withdraw your guilty plea.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Now, the Pimentel calculates a guideline
8 range of 168 to 210 months' imprisonment. Is that your
9 understanding?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that the letter, that
12 nothing in the letter limits the right of the government to
13 change its position any time concerning the appropriate
14 guideline range that applies in this case? Even if that change
15 is based, in whole or in part, on the indictment or what was in
16 the government's possession at the time they wrote the letter?
17 In addition, it doesn't limit the government in its ability to
18 argue to me or to the probation office, either orally or in
19 writing, any and all facts and arguments relevant to sentencing
20 that are available to the government at the time of sentencing,
21 nor does anything in the letter limit the right of the
22 government to seek a departure or variance from the guidelines,
23 in other words, or to take a position on any departure or
24 variance that may be suggested by me, by the probation office,
25 or by yourself through your counsel.

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, has anyone made any promise or
4 offered you any inducement to get you to plead guilty?

5 THE DEFENDANT: No.

6 THE COURT: Has anyone threatened you or forced you to
7 plead guilty?

8 THE DEFENDANT: No.

9 THE COURT: Has anyone made any promise to you as to
10 what your sentence will be?

11 THE DEFENDANT: No.

12 THE COURT: So, Mr. Franzone, we have reached the
13 point in the proceedings when I am going to ask you to please
14 tell me what it is that you did that makes you believe you are
15 guilty of the charges in the indictment.

16 THE DEFENDANT: From in or about 2014 to
17 September 2019, while I managed FF Fund 1, I misrepresented to
18 investors of the fund that the fund was highly liquid and I did
19 not disclose the true nature of every investment. I caused
20 monthly performance reports to be sent to investors by e-mail.
21 The performance reports did not completely disclose the full
22 nature of the portfolio or identify the investments. Investors
23 sent wires to the fund to purchase limited partnership interest
24 in the fund, including wires that went through the Southern
25 District of New York.

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1 THE COURT: And at the time did you know that it was
2 wrong for you to make those, to not advise the investors of
3 that information?

4 THE DEFENDANT: Yes.

5 THE COURT: And in connection with that, when I say
6 investors, these were folks that were sending -- I will say
7 you -- but sending the fund money; right?

8 THE DEFENDANT: Yes.

9 THE COURT: And the statements that you made to them,
10 in other words the information you provided to them that was
11 not accurate or omitted certain things, that got them to send
12 the money to you; is that right?

13 THE DEFENDANT: Yes.

14 THE COURT: Let me ask, Mr. Corozzo, do you know of
15 any valid defenses that would prevail at trial, do you know of
16 any reason why your client should not be permitted to plead
17 guilty?

18 MR. COROZZO: I do not, your Honor.

19 THE COURT: Are there any other questions that the
20 government believes are appropriate?

21 MS. MORTAZAVI: There are, your Honor. We have two
22 questions and are happy to take them one at a time or both
23 together.

24 THE COURT: Yes. Why don't we take it one at a time.

25 MS. MORTAZAVI: We would ask the Court to inquire as

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1 to whether Mr. Franzone was aware at the time he made the
2 misstatements about the fund's liquidity that the fund's
3 liquidity was important or material to investors.

4 THE COURT: So, Mr. Franzone, at the time that you
5 made the representations concerning the fund's liquidity to the
6 potential investors, and then to investors later on, that you
7 were aware of the importance of that, the liquidity, to the
8 investors?

9 THE DEFENDANT: Yes.

10 THE COURT: In other words, these are folks who wanted
11 to be able to get their money out relatively quickly if they
12 could?

13 THE DEFENDANT: Yes.

14 THE COURT: All right.

15 MS. MORTAZAVI: And the second question, your Honor,
16 is to just put a finer point on the colloquy that the Court had
17 with the defendant, which is that the defendant aimed the
18 misrepresentations at investors with the intent to obtain their
19 money, which was their investment in the hedge fund.

20 THE COURT: So, Mr. Franzone, in basically letting
21 these folks believe, through your statements, that these funds
22 were liquid, was it your intent that they would in fact invest
23 in the funds?

24 THE DEFENDANT: Yes.

25 THE COURT: Is there any other questions I should ask

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1 Mr. Franzone?

2 MS. MORTAZAVI: May we have a moment, your Honor?

3 THE COURT: Yes.

4 (Counsel conferring)

5 THE COURT: These are securities. What they were
6 buying, were those interests, they were securities?

7 THE DEFENDANT: Part of the fund was securities.

8 MS. MORTAZAVI: And, your Honor, just to clarify the
9 government's understanding, the investors were purchasing
10 shares of the fund which were themselves securities.

11 THE COURT: Is that accurate, Mr. Franzone, that the
12 investors were purchasing shares of the fund which were
13 securities?

14 THE DEFENDANT: Yes.

15 THE COURT: Anything else?

16 MS. MORTAZAVI: No further questions, your Honor.

17 THE COURT: Let me ask if the government could please
18 summarize what the government's evidence would have been had
19 Mr. Franzone gone to trial.

20 MS. MORTAZAVI: Certainly, your Honor.

21 Had Mr. Franzone proceeded to trial, the government
22 was prepared to offer the following evidence, among others:

23 Testimony from investors or limited partners in the
24 hedge fund that the defendant ran, who were misled by the
25 defendant's statements, who believed that he would maintain a

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1 highly liquid portfolio of trading in publicly traded
2 securities, that that mattered to them, and that they gave him
3 money or property in reliance on his misstatements and that
4 they did not redeem or take out their investment in the fund
5 based on the defendant's failure to correct his earlier lies.

6 Second, we would also admit at trial e-mails from the
7 defendant's personal e-mail account in which he falsely
8 described that he was trading, including an e-mail sent from
9 the defendant while he was in Miami, to an investor located in
10 Manhattan, soliciting and confirming that investor's investment
11 in the hedge fund.

12 We would produce summary records of bank account
13 statements and monthly investor reports showing that the
14 defendant was trading negligible amounts of publicly-traded
15 securities on public markets and was instead putting the vast
16 majority of the fund's assets, sometimes as much as 99 percent
17 of the fund's assets, into private investments; evidence and
18 testimony that the fund was so illiquid that, by 2019, it could
19 not fulfill investor redemptions within the required 90-day
20 notice period and that, as a result, the fund declared
21 bankruptcy and at the time the fund had only \$300,000 in
22 brokerage accounts and most of its funds in illiquid assets.

23 We would also establish, through bank records and
24 monthly investor statements and testimony of witnesses
25 including through the fund's administrator and through the

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1 bankruptcy trustee, that the defendant had overvalued his
2 investments substantially including for real estate that he had
3 purchased which was worth almost \$2 million less than the
4 valuations he had provided and including for private companies,
5 at least one of which was a shell company or had ceased
6 operations that were nonetheless valued on the corporate books
7 in the multiple millions of dollars despite being worth very
8 little.

9 As well, we would offer testimony that the defendant
10 did not have any audited financials despite reassuring
11 investors that he would maintain audited financials and have
12 third-parties validate the fees that he was receiving and the
13 investments of the fund.

14 THE COURT: Thank you.

15 So, Mr. Franzone, did you hear what the prosecutor
16 just said?

17 THE DEFENDANT: Yes.

18 THE COURT: Now, do you understand that you are giving
19 up your right to challenge all of the evidence that the
20 prosecutor just mentioned?

21 THE DEFENDANT: Yes.

22 THE COURT: Now, do both counsel agree that there is a
23 sufficient factual predicate to -- do all counsel agree that
24 there is a sufficient factual predicate for the guilty plea?

25 MS. MORTAZAVI: Yes, your Honor.

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1 MR. COROZZO: Yes, your Honor.

2 THE COURT: Does either counsel know of any reason I
3 should not accept Mr. Franzone's plea of guilty?

4 MS. MORTAZAVI: No, your Honor.

5 MR. COROZZO: No, your Honor.

6 THE COURT: So, Mr. Franzone, because you acknowledge
7 that you are in fact guilty of the charges in the indictment,
8 because I am satisfied that you know of your right including
9 your right to go to trial and that you are aware of the
10 consequences of your plea including the sentence which may be
11 imposed, and because I find that you are voluntarily and
12 knowingly pleading guilty, I'm going to accept your plea and
13 enter judgment of guilty on the counts in the indictment.

14 Now, the probation department, as I mentioned, is
15 going to want to interview you in connection with the
16 preparation of a presentence report.

17 Let me just ask, Mr. Corozzo, Ms. Lipsman, I assume
18 one or both of you will be present?

19 MR. COROZZO: That's correct, your Honor.

20 THE COURT: So that interview won't take place unless
21 your attorneys, one or more of your attorneys are with you,
22 either in person or virtually. Now, the only thing I ask is
23 that when you do speak to the probation department, that you
24 make sure that everything you tell them is as accurate as
25 possible and that you are truthful with them.

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1 Now, you will have an opportunity to go over the
2 presentence report with your attorneys before your sentencing
3 so I ask you to read it carefully, point out any mistakes or
4 errors in there, point out any information that you think
5 should be in there that isn't, so that they can take that issue
6 up with the probation officer, and then if it is not resolved
7 to your and their satisfaction, so that it can be brought up to
8 me at the time of your sentencing.

9 OK?

10 THE DEFENDANT: Yes. We will have the sentencing date
11 of July 15 at 10:00 a.m.

12 Does that work for counsel?

13 MS. MORTAZAVI: Yes, your Honor.

14 MR. COROZZO: Yes, Judge.

15 THE COURT: Now, I would ask that the government to
16 provide a factual statement to the probation office within the
17 next two weeks, and if defense counsel could contact probation
18 just to get a date within the next two weeks, not that you have
19 to have the interview in the next two weeks but that you have a
20 date when the interview will take place.

21 Now, with regard to submissions, my individual rules
22 call for the defense submission two weeks prior to sentencing
23 and the government's submission one week prior to sentencing.

24 So, Mr. Franzone, your bail conditions will remain the
25 same and so you need to abide by those going forward until

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1 sentencing. OK?

2 THE DEFENDANT: Yes.

3 THE COURT: Let me ask, is there anything else that I
4 should ask Mr. Franzone or that I should deal with today?

5 (Counsel conferring)

6 MS. MORTAZAVI: Your Honor, only for belt and
7 suspenders purpose we would ask that the Court ask the
8 defendant, specifically, that he intends to change his plea
9 with full knowledge that he is waiving his appellate rights as
10 to his suppression motion.

11 THE COURT: OK.

12 So, Mr. Franzone, with regard to my earlier mistake,
13 you are actually waiving your right to appeal anything having
14 to do with the suppression motion.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: All right.

18 Anything else?

19 MS. MORTAZAVI: Nothing further, thank you.

20 THE COURT: Anything further from the defense?

21 MR. COROZZO: No, your Honor. Thank you.

22 THE COURT: Thank you very much. We stand adjourned.

23 Mr. Franzone, I will see you on July 15.

24 THE DEFENDANT: Thank you, your Honor.

25 THE COURT: OK.

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